

1 Floyd W. Bybee, #012651
2 **BYBEE LAW CENTER, PLC**
3 90 S. Kyrene Rd., Ste. 5
4 Chandler, AZ 85226-4687
Office: (480) 756-8822
Fax: (480) 302-4186
floyd@bybeelaw.com

5 || Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

I. Preliminary Statement

- 20 1. Plaintiffs bring this action for damages based upon Defendants'

21 violations of the Fair Debt Collection Practices Act ("FDCPA"), 15

22 U.S.C. §§ 1692 *et seq.* In the course of attempting to collect a debt

23 allegedly owed by Plaintiffs, Defendants engaged in deceptive, unfair

24 and abusive debt collection practices in violation of the FDCPA.

25 Plaintiffs seek to recover actual damages, and statutory damages, as

1 well as reasonable attorney's fees and costs.

2 **II. JURISDICTION**

3 2. Jurisdiction of this Court, over this action and the parties herein, arises
4 under 15 U.S.C. § 1692k(d) (FDCPA), and 28 U.S.C. § 1331. Venue
5 lies in the Phoenix Division of the District of Arizona as Plaintiffs'
6 claims arose from acts of the Defendants perpetrated therein.

7 **III. PARTIES**

- 8 3. Plaintiffs are residents of Maricopa County, Arizona.
9 4. Plaintiffs are natural persons who are allegedly obligated to pay a debt
10 which was incurred for personal, family, or household purposes.
11 5. Plaintiffs are "consumers" as that term is defined by FDCPA §
12 1692a(3).
13 6. Defendant Midland Funding, LLC ("Midland") is a Delaware limited
14 liability company.
15 7. Midland regularly uses the courts in Arizona to collect consumer debts.
16 8. Midland collects or attempts to collect debts which it claims to have
17 purchased or to have been assigned after default.
18 9. Midland is a "debt collector" as that term is defined by FDCPA §
19 1692a(6).
20 10. Defendant Midland Credit Management, Inc. ("MCM") is a Kansas
21 corporation registered to conduct business within the state of Arizona.
22 11. MCM is licensed as a collection agency by the Arizona Department of
23 Financial Affairs, license number 0905285.
24 12. MCM regularly collects or attempts to collect debts owed or asserted to
25 be owed or due another, from residents within the State of Arizona.

IV. Factual Allegations

14. 19. Defendants filed suit against Plaintiffs in the Maricopa County
15. Superior Court on June 26, 2014 (hereinafter “Suit”).
16. 20. Defendants alleged in the Suit that Plaintiff Gordon Moye had opened
17. a credit card account with Citibank (South Dakota), N.A. on June 1,
18. 1993.
19. 21. Any credit card account which Plaintiffs would have opened would
20. have been used solely for personal, family, or household purposes.
21. 22. Plaintiffs deny opening the alleged credit card account with Citibank.
22. 23. Defendants further allege in the Suit that Midland acquired the alleged
23. debt from Asset Acceptance, LLC, who claims to have acquired the
24. alleged debt from Citibank.
25. 24. Upon information and belief, Midland assigned the alleged debt to

- 1 MCM for collection purposes.
- 2 25. Upon information and belief, MCM hired BHLM to represent Midland
3 in order to attempt to collect the alleged debt from Plaintiffs.
- 4 26. Defendants served Plaintiffs with the summons and complaint on or
5 about July 3, 2014.
- 6 27. Defendants had attached to the Complaint the Affidavit of Molly
7 Kampa In Support of Judgment, which was signed on behalf of
8 Midland by MCM employee Molly Kampa.
- 9 28. In the affidavit, Kampa states *inter alia* that:
- 10 4. Based upon my review of MCM's business
11 records: . . . 2) the account was charged off on
12 2007-12-24. . . .
- 13 29. Upon being served, Plaintiffs sought out and hired counsel to defend
14 them in the lawsuit.
- 15 30. During the course of defending the law suit, Plaintiffs have advised
16 Defendants that this debt is not theirs, and that even if it were, it is past
17 the applicable statute of limitations.
- 18 31. Despite Defendants' knowledge that the account is past the statute of
19 limitations, Defendants have continued to prosecute the collection suit
20 against Plaintiffs.
- 21 32. On April 30, 2015, Defendants filed in the Suit another copy of the
22 Kampa Affidavit attached to their Statement of Facts in Support of
23 Plaintiff's Motion for Summary Judgment.
- 24 33. At the time Defendants filed the Suit, they misrepresented to Plaintiffs
25 that the debt was not stale, and that the Suit was filed within the
 applicable statute of limitations.

34. However, at the time Defendants filed the Suit, the debt in fact was
stale and past the statute of limitations.
 35. At the time Defendants filed the Suit against Plaintiffs, they knew that
the debt was stale and past the statute of limitations.
 36. Despite knowing that their claim was stale, Defendants continued to
prosecute the Suit against Plaintiffs, including the filing of a motion for
summary judgment.
 37. As a result of Defendants' actions as outlined above, Plaintiffs has
suffered actual damages including, but not limited to, anxiety, worry,
embarrassment, sleeplessness, stress, invasion of privacy, loss of
opportunity, damage to credit and reputation, and other extreme
emotional distress.
 38. Defendants' actions as outlined above were intentional, willful, and in
gross or reckless disregard of Plaintiffs' rights, and part of Defendants'
persistent and routine practice of debt collection.
 39. In the alternative, Defendants' actions were negligent.

V. Causes of Action

Fair Debt Collection Practices Act

- 19 40. Plaintiffs repeats, realleges, and incorporates by reference the
20 foregoing paragraphs.

21 41. Defendants' violations of the FDCPA include, but are not necessarily
22 limited to, 15 U.S.C. §§ 1692e, 1692e(2)(A), 1692e(5), 1692e(8),
23 1692e(10), 1692f, and 1692f(1).

24 42. As a direct result and proximate cause of Defendants' actions in
25 violation of the FDCPA, Plaintiffs has suffered actual damages.

VI. DEMAND FOR JURY TRIAL

Plaintiffs hereby demands a jury trial on all issues so triable.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs requests that judgment be entered against Defendants for:

- a) Actual damages under the FDCPA;
 - b) Statutory damages under the FDCPA;
 - c) Costs and reasonable attorney's fees; and
 - d) Such other relief as may be just and proper.

DATED May 22, 2015 .

s/ Floyd W. Bybee
Floyd W. Bybee, #012651
BYBEE LAW CENTER, PLC
90 S. Kyrene Rd., Ste. 5
Chandler, AZ 85226-4687
Office: (480) 756-8822
Fax: (480) 302-4186
floyd@bybeelaw.com

Attorney for Plaintiffs